

1
2
3
4
5
6
7 SHERRY YALI LIU,
8 Plaintiff,
9 v.
10 KAISER PERMANENTE EMPLOYEES
11 PENSION PLAN FOR THE
12 PERMANENTE MEDICAL GROUP, INC.,
13 et al.,
14 Defendants.

Case No. 23-cv-03109-AMO

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 30

15 This case arises under the Employee Retirement Income Security Act (“ERISA”).
16 Defendants’ motion to dismiss was heard before this Court on May 16, 2024. Having read the
17 papers filed by the parties and carefully considered their arguments therein and those made at the
18 hearing, as well as the relevant legal authority, the Court hereby **GRANTS** the motion to dismiss
19 for the following reasons.

I. BACKGROUND¹

20 Plaintiff Sherry Yali Liu is the surviving sister of decedent Ya-Xia Liu. First Am. Compl.
21 (“FAC,” ECF 25) ¶ 3. Defendant Kaiser Permanente Employees Pension Plan For The
22 Permanente Medical Group, Inc. (the “Plan”) is a pension plan organized under ERISA. FAC ¶ 4.
23 Defendant Kaiser Foundation Health Plan, Inc. (“KFHP”) is the administrator and named
24 fiduciary under Section F-1 of the Plan Document. FAC ¶ 4.² Decedent Ya-Xia Liu was a
25 participant in the Plan through her employment at Kaiser Permanente and as a member of the

26
27 ¹ The Complaint makes the following allegations, which the Court accepts as true for purposes of
the motion to dismiss. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).

28 ² This Order refers to the Plan and KFHP collectively as “Kaiser.”

1 Service Employees International Union, Local 250, United Healthcare Workers in the Northern
2 California Region. FAC ¶¶ 3, 10. Ya-Xia began her employment at Kaiser Permanente in June
3 2000 and took a leave of absence beginning in May 2021. FAC ¶¶ 10, 11. Ya-Xia died on March
4 29, 2022, at age 68, while still on leave from Kaiser. FAC ¶¶ 12, 13. “Ya-Xia Liu never married,
5 had no domestic partner, had no children, and had no dependents of any kind.” FAC ¶ 14.

6 After Ya-Xia’s death, Plaintiff submitted a claim for Ya-Xia’s Plan benefits. FAC ¶ 19.
7 Plaintiff’s claim was denied via a letter dated October 3, 2022 (“Claim Denial Letter”). FAC ¶ 20.
8 The Claim Denial Letter explained that no benefits were payable to Plaintiff for several reasons,
9 including that (1) the Plan had not been provided with any information indicating that Ya-Xia had
10 a qualified dependent; and (2) Ya-Xia did not make a valid benefit election before her death,
11 which was a prerequisite for designating Plaintiff as her beneficiary. FAC ¶ 19.

12 Plaintiff appealed the denial via a letter dated December 28, 2022. FAC ¶ 21; Kang Decl.
13 ¶ 3, Ex. 1 (“Appeal Letter”).³ In her Appeal Letter, Plaintiff asserted that Ya-Xia “substantially
14 complied and would have fully complied” with the Plan’s benefit election procedures had she not
15 died. Kang Decl. ¶ 3, Ex. 1. Plaintiff further stated that “Ya-Xia Liu would have completed all
16 the required forms if she had not died and/or the Plan had not provided false information to her as
17 to who was a proper beneficiary.” *Id.* Additionally, in her declaration attached to her Appeal
18 Denial letter, Plaintiff acknowledged that “a benefit election for my sister was initiated online on
19 her behalf” but she never stated that her sister completed the benefit election. *Id.* Plaintiff further
20 stated that her sister elected a single sum payout, and she was her sister’s designated beneficiary.
21 Kang Decl. ¶ 3, Ex. 1. In addition, Plaintiff stated that her sister died before her benefit starting
22 date and, therefore, the benefit should have been paid to Plaintiff. *Id.*; *see also* FAC ¶ 23.

23 The Appeals Subcommittee of the Kaiser Permanente Administrative Committee (the
24 “Appeals Subcommittee”) denied Plaintiff’s appeal via a letter dated April 4, 2023 (“Appeal
25 Decision Letter”). FAC ¶ 24; Kang Decl. ¶ 4, Ex. 2 (Appeal Decision Letter). The Appeal
26 Decision Letter explained that Ya-Xia’s benefits are not payable to Plaintiff because: (1) Plaintiff
27

28 ³ Both parties agreed at the hearing that the Court could consider the correspondence related to
Plaintiffs’ claim as incorporated into the Complaint by reference.

1 is not Ya-Xia's surviving spouse or domestic partner, and Plaintiff did not provide sufficient
2 evidence to prove that she was Ya-Xia's qualified dependent, as defined in the Plan; (2) Ya-Xia
3 did not make a valid benefit election before her death to select a benefit starting date or to
4 designate Plaintiff as her beneficiary; (3) Ya-Xia died while employed by Kaiser and before she
5 completed a valid benefit election under the Plan; (4) Plaintiff cannot be Ya-Xia's "eligible
6 designated beneficiary" under Internal Revenue Code ("Code") § 401(a)(9)(E)(ii) (26 U.S.C.
7 § 401(a)(9)(E)(ii)), because the Plan is not a defined contribution plan subject to the "eligible
8 designated beneficiary" rules; and (5) by not allowing payment to Plaintiff, the Plan does not
9 permit the improper reversion of the Plan assets to the employer. *Id.*

10 Plaintiff initiated this lawsuit against Kaiser by complaint filed on June 23, 2023. ECF 1.
11 Plaintiff filed the now-operative First Amended Complaint ("FAC") on October 17, 2023. ECF
12 25. In the FAC, Plaintiff asserts claims for relief under ERISA §§ 502(a)(1)(B) and (3). FAC ¶ 1.
13 Specifically, she brings three claims for relief:

- 14 (1) the first claim is against the Plan only and seeks to enforce Ya-Xia's election to roll
15 over her benefits into an E*Trade securities account and award the benefits to Plaintiff
16 as Ya-Xia's beneficiary of the rollover account (FAC ¶¶ 31-49);
- 17 (2) the second claim is also against the Plan only and requests that the court construe the
18 Plan document consistent with the provisions of Title 26 U.S.C. § 401(a)(9)(E) and
19 award benefits to Plaintiff as Ya-Xia's beneficiary (FAC ¶¶ 50-64); and
- 20 (3) the third claim is against KFHP only and seeks the equitable remedies of reformation
21 and surcharge for KFHP's alleged breach of fiduciary duty in "administering,
22 investigating and deciding" Plaintiff's claim and appeal by "failing to properly train
23 and supervise its agents – employees of the Kaiser Retirement Center and members of
24 the 'Administrative Committee' to comply with and enforce THE PLAN DOCUMENT
25 as written and required to conform to the retirements of 26 U.S.C. § 409(a)(9)(E)"
26 (FAC ¶¶ 65-70).

27 Defendant filed the instant motion to dismiss on December 1, 2023, in response to the
28 FAC. ECF 30.

1 **II. DISCUSSION**2 **A. Legal Standard**

3 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests for the legal
4 sufficiency of the claims alleged in the complaint. *Ileto v. Glock*, 349 F.3d 1191, 1199-1200 (9th
5 Cir. 2003). Under Federal Rule of Civil Procedure 8, which requires that a complaint include a
6 “short and plain statement of the claim showing that the pleader is entitled to relief,” Fed. R. Civ.
7 P. 8(a)(2), a complaint may be dismissed under Rule 12(b)(6) if the plaintiff fails to state a
8 cognizable legal theory, or has not alleged sufficient facts to support a cognizable legal theory.
9 *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013).

10 While the court is to accept as true all the factual allegations in the complaint, legally
11 conclusory statements, not supported by actual factual allegations, need not be accepted. *Ashcroft*
12 *v. Iqbal*, 556 U.S. 662, 678-79 (2009). The complaint must proffer sufficient facts to state a claim
13 for relief that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 558-59
14 (2007) (citations and quotations omitted). “A claim has facial plausibility when the plaintiff
15 pleads factual content that allows the court to draw the reasonable inference that the defendant is
16 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation omitted). “[W]here the well-
17 pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the
18 complaint has alleged – but it has not ‘show[n]’ – that the pleader is entitled to relief.” *Id.* at
19 679. If dismissal is warranted, it is generally without prejudice, unless it is clear that the complaint
20 cannot be saved by any amendment. *Sparling v. Daou*, 411 F.3d 1006, 1013 (9th Cir. 2005).

21 **B. Benefits under ERISA § 502(a)(1)(B)**

22 Kaiser argues that Plaintiff’s claims for relief pursuant to ERISA § 502(a)(1)(B) (29
23 U.S.C. § 1132(a)(1)(B)), as alleged in her first and second claims for relief in the FAC, should be
24 dismissed because (1) Plaintiff is not her deceased sister/Plan participant Ya-Xia’s spouse,
25 domestic partner, or Qualified Dependent, as defined in the Plan, (2) Ya-Xia did not complete the
26 benefit election process, and (3) the term “eligible designated beneficiary” in Code
27 § 401(a)(9)(E)(ii), cannot be incorporated into the Plan because that section of the Code only
28 applies to a defined contribution plan and not a defined benefit plan.

1 Plaintiff does not argue that she qualifies for benefits as Ya-Xia's surviving spouse or
2 domestic partner. Plaintiff concedes that Ya-Xia "never married, had no domestic partner, had no
3 children, and had no dependents of any kind." FAC ¶ 14. Additionally, Plaintiff conceded at the
4 hearing that she does not intend to proceed under a theory that she was the decedent's qualified
5 dependent. Therefore, the Court focuses on the remaining bases for Plaintiff to qualify for
6 benefits under the Plan – whether Plaintiff fits the Plan definition of "designated beneficiary."

7 **1. Substantial Compliance with the Benefit Election Process**

8 Plaintiff avers that she is entitled to payment as Ya-Xia's designated beneficiary. She
9 avers that the appropriate method for identifying "designated beneficiary" originates from 26
10 C.F.R. § 401(a)(9)-4, which states: "An individual may be designated as a beneficiary under the
11 plan either by the terms of the plan or, if the plan so provides, by an affirmative election by the
12 employee (or the employee's surviving spouse) specifying the beneficiary." For benefits to be
13 payable to a beneficiary such as Plaintiff, the participant, pursuant to Plan § E-8(c), must "elect a
14 Time of Payment and Method of Payment by filing the prescribed form, in writing, with the
15 Administrative Committee . . . and by furnishing his intended Benefit Starting Date and proof of
16 age . . . in a written form acceptable to the Administrative Committee." Kang Decl. ¶ 5, Ex. 3
17 (ECF 31-3) at Kaiser_DB_LYX_000045. As described in the Appeal Decision Letter, "the Plan's
18 consistent administrative practice is to require the participant confirm their benefit election,
19 Benefit Starting Date, personal information, payment method and tax withholdings before
20 completing the benefit election." Kang Decl. ¶ 4, Ex. 2 at Kaiser_DB_LYX_001807. Further,
21 "[o]nce a benefit election is initiated online, a participant must complete all the forms
22 electronically," at which time the Kaiser Permanente Retirement Center verifies "the identity of
23 the person making the election, the information provided, and the benefit amount." *Id.* The
24 participant then receives an electronic notice that explains that "[y]our submitted documents are
25 under review," and that "[w]e will notify you when it is time to resume your benefit
26 commencement." *Id.* Only once that process is complete does the participant receive a notice
27 "that their next step is ready, and they should log back in to complete the benefit election process."
28 *Id.* at Kaiser_DB_LYX_001808.

1 Here, Ya-Xia did not complete the benefit election process before her death – she did not
2 finalize the selection of a Benefit Starting Date or designate Plaintiff as her beneficiary. Plaintiff
3 admits that “a benefit election for my sister was initiated online on her behalf.” Kang Decl. ¶ 3,
4 Ex. 1 (ECF 31-1) at Kaiser_DB_LYX_001844. Despite initiation of the benefit election process
5 online, Ya-Xia did not complete this process. *Id.* ¶ 4, Ex. 2 (ECF 31-2) at
6 Kaiser_DB_LYX_001808. Therefore, because Ya-Xia did not make a valid benefit election
7 before her death to designate Plaintiff as her beneficiary, Plaintiff is not entitled to benefits under a
8 plain reading of the Plan.

9 Plaintiff argues that the analysis cannot end there, however, because Ya-Xia Liu had
10 “substantially complied and would have fully complied” with the Plan’s benefit election
11 procedures had she not died. FAC ¶ 49; Kang Decl. ¶ 3, Ex. 1 (ECF 31-1) at
12 Kaiser_DB_LYX_001841. In substance, Plaintiff argues that the doctrine of substantial
13 compliance applies in a wide variety of ERISA contexts. *See* Opp. at 17-18 (citing *Chuck v.*
14 *Hewlett Packard Co.*, 455 F.3d. 1026, 1032 (9th Cir. 2006); *Schwartz v. Hartford Life and*
15 *Accident Ins. Co.*, 443 F. Supp. 3d 1085 (N.D. Cal. 2020); *Lamantia v. Voluntary Plan*
16 *Administrators, Inc.*, 401 F. 3d 1114, 1123 (9th Cir. 2005)). Of the cases Plaintiff cites, the Ninth
17 Circuit’s reasoning in *Becker v. Williams*, 777 F.3d 1035 (9th Cir. 2015), is most relevant here. In
18 *Becker*, the court considered whether an ERISA claimant was required to strictly or substantially
19 comply with a plan document to effectuate a change of beneficiary designation. *Id.* at 1041-42.
20 There, the plan did not require any specific procedure for unmarried participants to make such a
21 change, permitting participants to call or visit the plan website to do so. *Id.* The court concluded
22 that records of the divorced participant’s calls to the plan administrator to change his beneficiary
23 designation constituted substantial compliance with the plan’s requirements particularly because
24 the plan document did not incorporate or refer to beneficiary designation forms for unmarried
25 participants. *Id.* at 1042.

26 Here, though the parties focus their attention on the broader query of whether the
27 substantial compliance doctrine applies in the ERISA context, a closer comparison of *Becker* to
28 the facts in this case provides a clearer answer. The Ninth Circuit’s reasoning in *Becker* relied in

1 significant part on the absence of a specific procedure for unmarried participants to change their
2 beneficiaries – the plan stated that such a change could be initiated by phone call, and the
3 participant substantially complied with the plan by making such a phone call even though he failed
4 to complete subsequent paperwork omitted from the plan document. 777 F.3d at 1042. Kaiser's
5 Plan, by contrast, sets forth a different process for designating a beneficiary. Under the terms of
6 the Plan, benefit elections must be made “in a written form acceptable to the Administrative
7 Committee.” Plan § E-8(c). Further, as described above, the Plan Document requires the Plan to
8 provide several notices and for the beneficiary to return several verifications, confirmations, and
9 acknowledgements to make a valid election of benefits. *Id.* § E-8(d). There is no evidence that
10 Ya-Xia completed any written form. Ya-Xia failed to make a valid election of Plan benefits,
11 including a valid election of a Benefit Starting Date or beneficiary designation, before her death,
12 under the Plan's terms. As Plaintiff acknowledged in her Appeal Letter, Ya-Xia had only
13 “substantially complied and would have fully complied” with the Plan's benefit election
14 procedures had she not died. Kang Decl. ¶ 3, Ex. 1 at Kaiser_DB_LYX_001841; *see also* FAC
15 ¶ 21. Plaintiff further conceded the absence of a valid benefit election when she stated that “Ya-
16 Xia Liu would have completed all the required forms if she had not died and/or the Plan had not
17 provided false information to her as to who was a proper beneficiary.” Kang Decl. ¶ 3, Ex. 1 at
18 Kaiser_DB_LYX_001842-43. Additionally, Plaintiff acknowledged under penalty of perjury that
19 “a benefit election for my sister was initiated online on her behalf” without stating that any benefit
20 election was completed. *Id.* at Kaiser_DB_LYX_001844. Even if the substantial compliance
21 doctrine applied to the circumstances here, Ya-Xia's actions do not amount to substantial
22 compliance, which is defined as “every reasonable effort under the circumstances.” *BankAmerica*
23 *Pension Plan v. McMath*, 206 F.3d 821, 830 (9th Cir. 2000) (citation omitted). Initiation of an
24 online process not described at all in the Plan Document falls well short of substantial compliance.
25 Thus, because Ya-Xia did not make a valid benefit election before her death to designate Plaintiff
26 as her beneficiary, Plaintiff is not entitled to benefits under the Plan.

27 Plaintiff finally adds that Kaiser failed to dispute the issue of substantial compliance
28 administratively and thus waived the right to dispute it in litigation. *See Collier v. Lincoln Life*

1 *Assurance Co. of Boston*, 53 F. 4th 1180, 1182 (9th Cir. 2022) (barring the presentation of a
2 rationale for denial in litigation that had not been presented in the administrative process).
3 Plaintiff’s argument is founded on an incorrect premise. The Appeals Subcommittee considered
4 the Plaintiff’s substantial compliance argument, raised for the first time in her Appeal Letter, and
5 explained that the Plan terms require that the benefit election process must be completed for
6 benefits to commence. *See Kang Decl.* ¶ 3, Ex. 1 (averring that Ya-Xia substantially complied
7 with the designation of Plaintiff as beneficiary). As the Appeals Decision Letter explained,
8 because the “Plan’s terms provide clear and unambiguous rules regarding the benefit election and
9 beneficiary designation process” and “incomplete benefit commencement forms [were] initiated
10 online” for Ya-Xia’s benefits, Plaintiff was not entitled to benefits. *Kang Decl.* ¶ 4, Ex. 2 (Dkt.
11 31-2) at Kaiser_DB_LYX_001808. Therefore, Kaiser did not waive its argument regarding the
12 inapplicability of the substantial compliance doctrine.

13 The Court accordingly **DISMISSES** Plaintiff's first cause of action, which seeks an award
14 of Ya-Xia's benefits to Plaintiff. Plaintiff fails to establish that she was Ya-Xia's designated
15 beneficiary.

2. Designated Beneficiary Under Section 401(a)(9)(E)

17 Plaintiff argues that, regardless of the substantial compliance discussion, she is entitled to
18 her sister's death benefits as a matter of law. Plaintiff asserts that Code § 401(a)(9)(E)(ii) is
19 incorporated by reference into the Plan by use of the phrase "Required Beginning Date" and that,
20 because the term "designated beneficiary" is not defined in the Plan document, interpretation of
21 the document must look to the definition set out in the Code. *See* Opp. at 15:27-28. Specifically,
22 Plaintiff asserts that under Code § 401(a)(9)(E)(ii), an "eligible designated beneficiary" includes
23 an individual who is not more than 10 years younger than the employee, and, because Plaintiff is
24 less than 10 years younger than Ya-Xia, she is an eligible designated beneficiary under the Plan.
25 FAC ¶¶ 57, 58.

26 First, Plaintiff reads the Plan incorrectly. The Plan does define “Required Beginning
27 Date,” and it is “April 1 of the calendar year following the date a Participant attains age 70½ . . .”

1 Kang Decl. ¶ 5, Ex. 3 (ECF 31-3) at Kaiser_DB_LYX_000091. Plaintiff's purported basis for
2 incorporation by reference thus misses the mark.

3 Second, Code § 401(a)(9)(E)(ii) does not apply here, as it applies only to defined
4 contribution plans and not defined benefit plans such as the Plan. Code § 401(a)(9)(E)(ii) defines
5 "eligible designated beneficiary" to include "any designated beneficiary who is . . . an individual
6 . . . who is not more than 10 years younger than the employee." The term "eligible designated
7 beneficiary," is, in turn, only used in § 401(a)(9)(H), which is titled "Special rules for certain
8 defined contribution plans." Code § 401(a)(9)(H) modifies the distribution period with respect to
9 "eligible designated beneficiaries," as defined under Section 401(a)(9)(E)(ii). Because Code
10 § 401(a)(9)(E)(ii) only applies to defined contribution plans, and not to defined benefit plans such
11 as the Plan, it does not apply here. Even if it did, it would not render Plaintiff Ya-Xia's designated
12 beneficiary. Instead, it might at most make her eligible for designation as a beneficiary.

13 Further, contrary to Plaintiff's contentions, Kaiser did not abandon this argument in its
14 administrative rationale for denial. As detailed in the Appeals Decision Letter, the Administrative
15 Subcommittee considered Plaintiff's argument that she is entitled to a distribution from the Plan
16 because she is an "eligible designated beneficiary" under Code § 401(a)(9)(E)(ii) and rejected this
17 argument; it explained that Code § 401(a)(9)(H) which refers to "eligible designated beneficiary"
18 does not apply to defined benefit plans pursuant to Code § 401(a)(9)(H)(vi). Kang Decl. ¶ 4, Ex. 2
19 (ECF 31-2) at Kaiser_DB_LYX_001805-6.

20 The Court therefore **DISMISSES** Plaintiff's second cause of action, which asks the Court
21 to construe the Plan under Title 26 U.S.C. § 401(a)(9)(E) to award Ya-Xia's benefits to Plaintiff.
22 Plaintiff fails to establish that Code § 401(a)(9)(E) applies here.

23 **C. Breach Of Fiduciary Duty Under ERISA § 502(a)(3)**

24 Kaiser argues that Plaintiff's third claim for relief under ERISA § 502(a)(3) (29 U.S.C.
25 § 1132(a)(3)), fails because there was no breach of fiduciary duty and the claim arises from the
26 same alleged conduct as her claims for benefits in Claims 1 and 2 – denial of Plaintiff's claim for
27 benefits under the terms of the Plan. The Court considers the viability of the third claim in general
28 before turning to Plaintiff's requests for equitable relief via surcharge and reformation.

1 **1. Section 502(a)(3) Claim – In General**

2 An ERISA § 502(a)(3) claim has two elements: (1) the plaintiff seeks relief to redress a
3 violation of ERISA or the terms of a plan; and (2) that the relief sought is appropriate equitable
4 relief. *Warmenhoven v. NetApp, Inc.*, 13 F.4th 717, 725 (9th Cir. 2021). However, a Section
5 502(a)(3) claim that does not arise from a separate injury or does not seek a different remedy from
6 a Section 502(a)(1)(B) claim for benefits is deemed duplicative and impermissible. *Moyle v.*
7 *Liberty Mutual Retirement Benefit Plan*, 823 F.3d 948, 961 (9th Cir. 2016), as amended on denial
8 of reh’g and reh’g en banc (Aug. 18, 2016).

9 Here, Plaintiff’s claim fails on at least two grounds. First, she fails to establish a violation
10 of ERISA or the terms of the Plan – to the contrary, the record reveals that Kaiser appropriately
11 complied with the terms of the Plan by enforcing its rules. Second, the relief Plaintiff seeks
12 (reformation and surcharge) is essentially a distribution of Ya-Xia’s benefits. *See* FAC at 22:6-12
13 (Plaintiff, in seeking surcharge, requests that she be made “whole” and for the “Plan Administrator
14 [] to disgorge its inequitably retained money and pay [Plaintiff] an amount equal to the actuarial
15 equivalent of the \$676,980.77.”); 22:1-5 (Plaintiff requests that the Plan be reformed to include
16 her as a beneficiary so that the “Plan Administrator [is required] to pay [Plaintiff] benefits owed to
17 her under THE PLAN as reformed.”). Such duplicative relief does not arise from a separate
18 injury. For these reasons alone, the Court must dismiss Plaintiff’s third claim.

19 Plaintiff argues that the “tax gross-up” relief she seeks through her Section 502(a)(3) claim
20 is distinct from the payment of Plan benefits she seeks through her Section 502(a)(1)(B) claim.
21 Plaintiff relies heavily on *Clemens v. Centurylink*, 874 F.3d 1113 (9th Cir. 2017), to demonstrate
22 that a “gross-up” can be an appropriate form of equitable relief. But *Clemens* does not support
23 Plaintiff’s claim here, as that case dealt with whether Title VII of the Civil Rights Act of 1964 (not
24 ERISA) grants courts the authority to award back-pay “gross-ups” in employment discrimination
25 cases. Indeed, Plaintiff cites no relevant ERISA authorities that demonstrate that a “tax gross-up”
26 is appropriate equitable relief for a Section 502(a)(3) claim. Furthermore, the damages Plaintiff
27 seeks are unrelated to back-pay or wages. Thus, Plaintiff’s attempt to distinguish the type of
28

1 remedy she seeks does not alter the unavailability of her third cause of action for equitable relief
2 under ERISA § 502(a)(3) (29 U.S.C. § 1132(a)(3)).

3 The analysis regarding this third cause of action could end here, but it additionally fails on
4 both the claimed bases for equitable relief, surcharge and reformation.

5 **2. Surcharge**

6 Surcharge, which is monetary compensation for a loss resulting from a breach of fiduciary
7 duty or to prevent unjust enrichment, is actionable only where a breach of a duty injures a plaintiff
8 and she can show “harm and causation.” *Gabriel v. Alaska Elec. Pension Fund*, 773 F.3d 945,
9 957-58 (9th Cir. 2014).

10 Here, Plaintiff avers that Kaiser breached its fiduciary duty by denying her benefits, but for
11 the reasons discussed above, there was no breach of fiduciary duty – Kaiser adhered to the Plan’s
12 terms in administering Plaintiff’s claim and appeal, and thus no fiduciary breach occurred.
13 Plaintiff does not allege in the FAC that Kaiser was unjustly enriched. Plaintiff is therefore not
14 entitled to surcharge.

15 **3. Reformation⁴**

16 In determining whether reformation is appropriate, the Court must assess whether the Plan
17 contains terms that either (i) arise from a mistake of fact or law and fail to reflect the drafter’s
18 intent, or (ii) were induced by fraud, duress, or undue influence. *Skinner v. Northrop Grumman*
19 *Ret. Plan B*, 673 F.3d 1162, 1166 (9th Cir. 2012).

20 The FAC is devoid of any allegations that the terms of the Plan were the product of a
21 mistake, or that a mutual mistake occurred as to the content or effect of the Plan’s terms. Plaintiff
22 also does not allege that there was any fraud. The Plan clearly sets forth the requirements for
23 commencing the benefit process and the definition of designated beneficiary. Plaintiff’s cursory
24

25 _____
26 ⁴ Plaintiff does not address reformation at all in her Opposition brief, thus, as noted by Kaiser, this
27 renders the claim abandoned. *See Qureshi v. Countrywide Home Loans, Inc.*, 2010 WL 841669,
28 *6 n.2 (N.D. Cal. Mar. 10, 2010) (holding that plaintiff’s failure to address in opposition brief
claims challenged in a motion to dismiss, an “abandonment of those claims”) (citing *Jenkins v.*
County of Riverside, 398 F.3d 1093, 1095 n.4 (9th Cir. 2005)). Nevertheless, the Court addresses
the merits of the claim because it dismisses the FAC with prejudice.

1 argument that Kaiser's interpretation of the Code in this regard was somehow "erroneous" falls
2 well short of the standard necessary for reformation.

3 **III. CONCLUSION**

4 For the foregoing reasons, the Court **GRANTS** Defendants' motion to dismiss. Because
5 Plaintiff's claims fail as a matter of law and because Plaintiff acknowledged at the hearing that she
6 could not allege any additional facts, the Court finds that further amendment would prove futile.
7 Accordingly, the Court **DISMISSES the case WITH PREJUDICE**.

8
9 **IT IS SO ORDERED.**

10 Dated: June 20, 2024

11
12 
13 **ARACELI MARTÍNEZ-OLGUÍN**
14 **United States District Judge**